

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-103963-11

Date: JULY 19, 2011

Re:

Legend

Husband =
Husband's Estate=
Wife =
Wife's Estate =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Year 1 =
Year 2 =
Trust =

w =
Co-Administrators=

Dear :

This letter responds to a letter dated December 29, 2010, and subsequent correspondence, from your authorized representative, requesting extensions of time under § 2642(g)(1) of the Internal Revenue Code (Code) and § ' 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to allocate your generation-skipping transfer (GST) exemption to a trust.

Facts

Taxpayers are Husband and Wife. On Date 1, a date prior to December 31, 2000, Taxpayers created an irrevocable trust, Trust, for the benefit of Taxpayers' children and more remote issue. Husband and Wife each transferred property valued at \$w to Trust on Date 1. Date 1 is in Year 1. On Date 2, Husband and Wife each transferred property valued at \$w to Trust. Date 2 is in Year 2. Husband filed Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return for the Year 1 gift to Trust and allocated his GST exemption to the transfer. Wife also filed Form 709 for the Year 1 gift to Trust and allocated her GST exemption to the transfer. Wife died on Date 3 and Husband died on Date 4.

During the examination of Husband's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return by the Internal Revenue Service, the Co-Administrators of Husband's estate discovered that neither Husband nor Wife filed a Form 709 for the Year 2 gifts to Trust.

Husband's Estate and Wife's Estate request extensions of time to allocate his GST exemption and her GST exemption to the Date 2 transfers to Trust. It is represented that, to date, no taxable distributions, taxable terminations, or any other events have occurred with respect to Trust that would give rise to a GST tax liability.

Law and Analysis

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a), as in effect for decedents dying and generation-skipping transfers before January 1, 2004, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than a direct skip, is made on Form 709.

Section 2642(b)(1)(A) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be

made under § 2632(b)(1) or (c)(1), the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)).

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 9100-2 provides an automatic extension of time for making certain elections. Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-3(a) provides, in part, that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides, in part, except as provided in § 301.9100-3(b)(3)(i) through (iii), that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Husband's Estate is granted an extension of time of 120 days from the date of this letter to allocate his available GST exemption to the Date 2 transfer to Trust. In addition, Wife's Estate is granted an extension of time of 120 days from the date of this letter to allocate her available GST exemption to the Date 2 transfer to Trust. As indicated above, neither Husband nor Wife filed a Form 709 for Year 2 and this ruling does not extend the time to file any Form 709. The allocations will be effective as of the date of the transfer and will be based on the value of the contributions on the date of the transfer.

The allocations of Taxpayers' GST exemption should be made on Forms 709 and filed with the Internal Revenue Service Center in Cincinnati. A copy of this letter should be forwarded to the Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999, along with the Forms 709.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By: _____
Leslie H. Finlow
Senior Technician Reviewer
Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy for § 6110 purposes